

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Jessica Yeager, Senior Scientist
Potesta & Associates, Inc.
7012 MacCorkle Ave.
Charleston, West Virginia 25304

JUL 24 2017

Michael Callaghan, Esquire
Neely & Callaghan
159 Summers Street
Charleston, West Virginia 25301

Re: Dam Characterization and Removal Plan of Dams 11 through 20

Dear Ms. Yeager:

On October 11, 2016, pursuant to Paragraph 24 of the Consent Decree entered in *United States, et al. v. James C. Justice Companies, et al.*, Civ. Action No. 1:15-cv-16018, the U.S. Environmental Protection Agency Region III (EPA), in consultation with the West Virginia Department of Environmental Protection, provided comment on the above-referenced plan. To date, no response to EPA's comments has been received. As a follow-up, representatives of EPA and the U.S. Army Corps of Engineers visited the dams on February 28, 2017. Unfortunately, however, we are not aware of any further progress by Potesta on restoration- and mitigation-related work following the February 28 site visit.

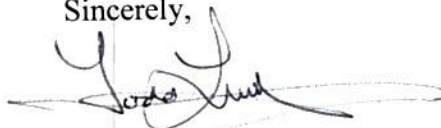
EPA observed that at least 16 of the 20 structures have partially failed, resulting in further sedimentation, loss of stream channel, adverse impacts to the biotic community, and the potential for instream temperature change. Based on its observations, EPA believes that the goals of the restoration as described in Paragraph 23 of the Consent Decree can be accomplished in a relatively straightforward manner, consisting of removal of the dam structures, accompanied by stabilization of the original stream channel and floodplain through planting of native West Virginia seed mixture. In addition, as provided in Paragraph 23 of the Consent Decree, any restoration plan should include quantitative performance standards, a 10-year monitoring period, and compensation for impacts to streams and wetlands using the West Virginia Stream and Wetland Valuation Metric ("WVSWVM") to determine the appropriate amount of mitigation needed to offset permanent and temporal losses to aquatic resources. Such compensatory mitigation can consist of on-site enhancement or off-site mitigation.

Consistent with the foregoing, we offer the following revised comments on the above-referenced plan:

- The plan should include removal of all dams (1-20) no later than September 15, 2017 to take advantage of generally lower flow conditions.
- EPA generally concurs that wetlands located along the channel should be identified and avoided during construction.
- While EPA does not object to use of the pre-existing ford crossing at Dam 15 during construction to access the channel, please provide information regarding whether you plan to enhance, modify or remove that structure at the end of the process.
- The plan should include quantitative performance standards. Post-construction benthic macroinvertebrate and fish monitoring should be included and incorporated into restoration and mitigation performance standards.
- A list of vegetative species to be used for riparian areas and stabilization measures should be included.
- The one year monitoring period provided in the plan to determine if further stream restoration techniques are required for stabilization of each dam removal reach is insufficient. Paragraph 23 of the Consent Decree calls for a 10-year monitoring plan. Performance standards should be achieved in at least two consecutive years.

Response to EPA's October 11, 2016 comments is far past the period described in Paragraph 25 of the Consent Decree. Accordingly, we expect a response to these comments no later than 21 days to allow work to be completed by September 15, 2017. If you have any questions, please contact Stefania D. Shamet of our Office of Regional Counsel at (215) 814-2682 or representatives of Potesta can call me directly at (215) 814-2099.

Sincerely,



Todd Lutte
Enforcement Coordinator
Office of Environmental Programs
Environmental Assessment and
Innovation Division